In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1540

DARRELL L. SECHREST AND EVELYN F. SECHREST,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner[1] executed a separation agreement, later incorporated into a divorce decree, with his former wife, Barbara, which provided that he was to make monthly alimony payments to Barbara until her death or remarriage. Upon her remarriage he was required to pay a lump sum of twelve times the current monthly payment. Upon Barbara's remarriage, petitioner made a lump sum payment to her of $9,000, in accordance with the agreement.

On audit, the Commissioner disallowed petitioner's deduction of the single payment as alimony, because it

---

[1]References to "petitioner" are to Darrell L. Sechrest. Evelyn F. Sechrest is a party because she filed a joint return with petitioner for the year at issue

was not a "periodic" payment under Section 71(a)(1) of the Internal Revenue Code of 1954. That provision requires the inclusion in the wife's income of "periodic payments" received pursuant to a divorce decree. Section 215 of the Internal Revenue Code of 1954 allows a deduction to the husband for such payments includable in the wife's income.

Petitioner then filed this refund suit. The district court held that the payment was a periodic payment deductible as alimony. Following its prior decision in a similar case, *Commissioner* v. *Senter*, 242 F. 2d 400 (C.A. 4), the court of appeals reversed. It concluded that the payment was a lump-sum payment which is not deductible as alimony.

All of the courts of appeals which have considered this question have held that such a single payment, unrelated to the support of the wife, is not a "periodic payment" which is deductible as alimony under Section 71(a)(1). See *Commissioner* v. *Senter*, *supra*; *Norton* v. *Commissioner*, 192 F. 2d 960 (C.A. 8); *Lounsbury* v. *Commissioner*, 321 F. 2d 925 (C.A. 9); *Van Orman* v. *Commissioner*, 418 F. 2d 170 (C.A. 7); *Houston* v. *Commissioner*, 442 F. 2d 40 (C.A. 7). While petitioner refers (Pet. 8-12) to several decisions which have looked to whether payments were indefinite in amount and subject to contingencies in determining whether they were "periodic," those cases are inapposite. The criteria employed by those decisions are applicable only to a series of payments which lapse upon remarriage of the wife.

Here, however, the single $9,000 payment was not one of a series of payments and was completely unrelated to the previous support payments. Moreover, unlike those cases, the contingency here operated precisely in the opposite fashion, because the $9,000 payment was a final

lump-sum settlement to be made only upon the remarriage of the wife. It was therefore not deductible as alimony under Section 71(a)(1).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1974.